

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FREDERICK E. LANDRIGAN,

Plaintiff,

-against-

Civil Action No: 07- CIV 8669

AMENDED
VERIFIED ANSWER

LEO R. KAYTES, JR., LEO KAYTES FORD, INC.,
P.O. RON DONNATIN and THE TOWN OF WARWICK,

Defendants.
-----X

The defendant, THE TOWN OF WARWICK, by and through their attorneys, LAW OFFICES OF DONALD L. FRUM, hereby answer the complaint as follows:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "1," "2," "3," "8," "9," "10," "11," "12," "13," "14," "15," "16," "17," "18," "19," "20," "21," "22," "23," "24," "25," "26," "27," "28," "29," "30," "31," "32," and "33," of the complaint.

AS AND FOR A FIRST CAUSE OF ACTION

2. The defendant, answering paragraph numbered "34" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "33" inclusive as if set forth at length herein.

3. Denies the allegations contained in paragraphs numbered "35," of the complaint.

AS AND FOR A SECOND CAUSE OF ACTION

4. The defendant, answering paragraph numbered "36" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "35" inclusive as if set forth at length herein.

5. Denies the allegations contained in paragraphs numbered "37," of the complaint.

AS AND FOR A THIRD CAUSE OF ACTION

6. The defendant, answering paragraph numbered "38" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "37" inclusive as if set forth at length herein.

7. Denies the allegations contained in paragraphs numbered "39," of the complaint.

AS AND FOR A FOURTH CAUSE OF ACTION

8. The defendant, answering paragraph numbered "40" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "39" inclusive as if set forth at length herein.

9. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "41," of the complaint.

AS AND FOR A FIFTH CAUSE OF ACTION

10. The defendant, answering paragraph numbered "42" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "41" inclusive as if set forth at length herein.

11. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "43," of the complaint.

AS AND FOR A SIXTH CAUSE OF ACTION

12. The defendant, answering paragraph numbered "44" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "43" inclusive as if set forth at length herein.

13. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "45," of the complaint.

AS AND FOR A SEVENTH CAUSE OF ACTION

14. The defendant, answering paragraph numbered "46" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "45" inclusive as if set forth at length herein.

15. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "47," of the complaint.

AS AND FOR A EIGHTH CAUSE OF ACTION

16. The defendant, answering paragraph numbered "48" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "47" inclusive as if set forth at length herein.

17. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "49," of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. The accident or occurrence complained of was caused in whole or in part by the culpable conduct attributed to the Plaintiff including contributory negligence and/or assumption of the risk and that by reason thereof the amount of damages recoverable, if any, shall be diminished in whole or in part by that portion of which the culpable conduct attributed to the Plaintiff bears to the alleged conduct of the defendant which allegedly caused the damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. The limited liability provisions of Article 16 of the CPLR are applicable.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. Plaintiff cannot maintain this lawsuit against the defendant, THE TOWN OF WARWICK, since no prior written notice of any claims dangerous or defective condition was given to the defendant, THE TOWN OF WARWICK, pursuant to the applicable provisions of law of the State of New York and other similar local municipal provisions of law.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

21. The Court lacks personal jurisdiction over the defendant, THE TOWN OF WARWICK, for failure of Plaintiff to comply with the requirements of the General Municipal Law of the State of New York and other similar local municipal provisions of law.

CROSS CLAIM

22. As and for a Cross-Claim against the Co-Defendants, LEO R. KAYTES, JR., and LEO KAYTES FORD, INC., the answering defendant respectfully alleges as follows:

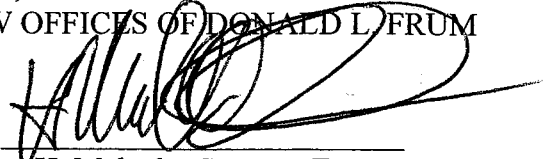
23. That if the plaintiff was caused to sustain damages at the time and place set for in the plaintiffs' complaint through any carelessness, and recklessness, and/or negligence other than the plaintiffs' own negligence, carelessness and recklessness, said damages were sustained by reason of the primary carelessness, recklessness and negligence and/or affirmative acts of mission and commission, by the Co-Defendants, LEO R. KAYTES, JR., and LEO KAYTES FORD, INC., individually or their agents, servants and/or employees, with the negligence, if any, on the part of the answering defendant, THE TOWN OF WARWICK, being secondary and/or derivative only.

24. That by reason of the foregoing, the AFORENAMED Co-Defendants, LEO R. KAYTES, JR., and LEO KAYTES FORD, INC., will be liable to the answering defendants in the event and in the amount of recovery herein by the plaintiff or in such amount as the Court or Jury may direct.

WHEREFORE, the defendant, THE TOWN OF WARWICK, demands judgment dismissing the complaint of the plaintiff herein, and judgment on the cross-claim, together with costs and disbursement of this action and for such other and further relief as to this Court may seem just and proper.

Dated: Elmsford, NY
November 27, 2007

Yours, etc
LAW OFFICES OF DONALD L. FRUM

By: 
H. Malcolm Stewart, Esq.

Attorneys for Defendant
THE TOWN OF WARWICK
565 Taxter Road - Suite 150
Elmsford, NY
914-347-5522

To:
CLIFFORD G. KLEINBAUM, ESQ.
Attorney for the Plaintiff
11 Martine Avenue, 12th floor
White Plains, New York 10606
(914) 644-2000

ATTORNEY AFFIRMATION OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

H. Malcolm Stewart, Esq., an attorney duly admitted to practice law in the State of New York affirms the truth of the following under penalty of perjury:

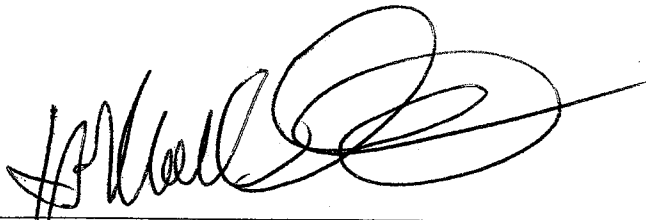
On November 28, 2007, I served a true copy of the annexed:

AMENDED VERIFIED ANSWER

in the following manner: By mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee as indicated below:

CLIFFORD G. KLEINBAUM, ESQ.
Attorney for the Plaintiff
11 Martine Avenue, 12th floor
White Plains, New York 10606
(914) 644-2000

Dated: Elmsford, NY
November 28, 2007

A handwritten signature in black ink, appearing to read 'H. Malcolm Stewart', with a large, stylized circular flourish at the end.

H. Malcolm Stewart, Esq.